light of the circumstances under which they are made, not misleading.

(b) Notwithstanding paragraph (a) of this section, unless otherwise required to be included in the registration statement, the failure to include in a registration statement information included in a free writing prospectus will not, solely by virtue of inclusion of the information in a free writing prospectus (as defined in Rule 405 (§ 230.405)), be considered an omission of material information required to be included in the registration statement.

[Reg. C, 12 FR 4072, June 24, 1947, as amended at 70 FR 44811, Aug. 3, 2005]

§ 230.409 Information unknown or not reasonably available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof could involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions:

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[Reg. C, 12 FR 4072, June 24, 1947, as amended at 14 FR 91, Jan. 7, 1949]

§ 230.410 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

[Reg. C, 12 FR 4073, June 24, 1947]

§ 230.411 Incorporation by reference.

(a) *Prospectus.* Except as provided by this section, Item 1100(c) of Regulation AB (§ 229.1100(c) of this chapter) for registered offerings of asset-backed securities, or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Information not required in a prospectus.* Except for exhibits covered by paragraph (c) of this section, information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus subject to the following provisions:

(1) Non-financial information may be incorporated by reference to any document;

(2) Financial information may be incorporated by reference to any document, provided any financial statement so incorporated meets the requirements of the forms on which the statement is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given;

(3) Information contained in any part of the registration statement, including the prospectus, may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in the prospectus; and

(4) Unless the information is incorporated by reference to a document which complies with the time limitations of § 228.10(f) and § 229.10(d) of this chapter, then the document, or part thereof, containing the incorporated information is required to be filed as an exhibit.

(c) *Exhibits.* Any document or part thereof filed with the Commission pursuant to any Act administered by the